A

DIALOGUE

BETWEEN A

COUNTRY FARMER

AND A

JURYMAN,

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COUNTRY FARMER

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JURYMAN,

ON THE

SUBJECT OF LIBELS.

The Liberty of the Preſs, and the Rights of Jurymen, are the Bulwark of the Engliſh Conſtitution.

LONDON,

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TO THE

SUPPORTERS

OF THE

BILL OF RIGHTS,

THIS LITTLE

CONVERSATION PIECE

Is moſt humbly dedicated, by

Their moſt obedient Servant,

THE AUTHOR.

A

DIALOGUE

BETWEEN A

COUNTRY FARMER

AND A

JURYMAN.

C. PRAY, 'ſquire, was not you a juryman in a cauſe wherein the King was plaintiff and David Iſaac defendant?

J. Yes.

C. What was the ſubject-matter?

J. It was an information againſt the defendant for publiſhing a libel.

C. Pray what is a libel?

J. A little book.

C. Is

C. Is then the publication of a little book criminal?

J. No.

C. Why then was you called upon to try the defendant, for publiſhing a libel, which you ſay is a little book, if it was not criminal?

J. The publication of every little book is moſt clearly not criminal; or elſe the publiſher of Wake's Catechiſm, or the Hiſtory of Robin Hood and Little John, would be criminal.

C. What then is it that makes it ſo?

J. It is the malice, the falſehood, the wickedneſs, or the ſeditiouſneſs of it, and the like, that conſtitutes the crime.

C. How can that be, when I heard my neighbour farmer Jones inſiſt upon it, that he hath often heard my Lord Judge upon the bench declare, that the jury had nothing to do either with the malice, the falſehood, the wickedneſs, or the ſedition of it. That that was all form; and they were only to find whether the defendant did publiſh it.

J. You certainly muſt be miſtaken; for farmer Jones never could ſay any ſuch thing.

C. I

C. I am ſure he did; for I was ſo much amazed at it, that I went home, and ſet it down on the firſt leaf of my Bible.

J. Reflect but a moment, and your own common ſenſe will convince you of your error.

C. Common ſenſe cannot overturn facts. The farmer did ſay ſo; and I am poſitive of it.

J. Then let us reaſon the matter together.

C. With all my heart. I long to hear your opinion, as the affair ſeems to be of great conſequence.

J. As you have often been upon a jury, I ſuppoſe you have not forgot that it is always cuſtomary for the jury to take an oath before the trial.

C. I remember it well. But the contents of the oath I do not now perfectly recollect.

J. I will tell you then. It is this: The jury ſwear, that they will well and truly try the iſſue joined between our ſovereign Lord the King and the defendant, and a true verdictgive, according to the evidence.

C. This oath ſeems to be a very ſerious affair.

J. Very ſerious, indeed! and ſo it ought to be; for on the due attention to this oath depends the

the life, liberty, and property of every Engliſh-man.

C. Pray what do you mean by the Iſſue?

J. I mean, Sir, that caſe which the parties have agreed to refer to the jury's conſideration; and which is reduced into a legal proper form. But leaſt you may not comprehend it clearly, I will give you the ſubſtance of the proceedings, whereby you will be the better able to judge what is meant by the word Iſſue. You muſt obſerve then, that the attorney-general ſets forth, in the information he exhibits againſt the defendant, that he did, on ſuch a day, publiſh a falſe, ſcandalous and ſeditious libel, the tenor whereof is as follows. And then he tranſcribes the paper or book he complains of *verbatim & literatim*, and puts ſuch conſtructions upon it, by innuendo's, as he thinks will beſt anſwer his purpoſe. To this the defendant pleads, that he is not guilty in manner and form as the information ſtates; and puts himſelf upon the country. And the attorney-general does the like. This is the Iſſue; and he ſubmits the determination of it to twelve of his equals.

C. Pray

C. Pray what do you mean by the words manner and form?

J. By the words manner and form, I apprehend, Sir, the defendant means to ſay that he did not publiſh a falſe, ſcandalous, and ſeditious libel.

C. How then can that be true which my neighbour farmer Jones told me?

J. It cannot. For no honeſt judge will direct me to find the defendant guilty of the mere publiſhing the little book ſet forth in the information, when he knows I am ſworn to try the iſſue between the parties joined, which is, whether the defendant did publiſh a falſe, ſcandalous, and ſeditious libel, and not whether he did publiſh the little book or paper ſet forth in the information, for that is not what I am ſworn to try.

C. But pray Sir, when a perſon is indicted for murder, does not the indictment ſtate, that the criminal was moved and ſeduced by the inſtigation of the devil.

J. Yes.

C. Is that part of the indictment neceſſary to be proved?

J. Moſt clearly not—nor is it neceſſary to ſet it forth in the indictment, as I conceive, for if thoſe words were to be left out, and the indictment to ſtate, that the criminal did on ſuch a day murder a particular perſon therein named with malice prepenſe, I conceive the indictment would be as good and effectual in law, as if the words moved and ſeduced by the inſtigation of the devil were inſerted.

C. If therefore theſe words which are generally inſerted in indictments are not neceſſary to be proved, how comes it about that you ſo ſtrenuouſly inſiſt, that the attorney general is bound to prove that the little book, or paper, ſet forth in the information, is falſe, ſcandalous, and ſeditious?

J. I apprehend, that as every publication is not criminal, it is neceſſary to point out ſomething in the publication you complain of to render it ſo, or elſe there is no difference in publications.

C. That is true—how then can you reconcile finding a defendant guilty of the bare publication

tion of a libel, or little book, when the information chargeth him with publiſhing, a falſe, ſcandalous, and ſeditious, libel, and not the leaſt falſhood, ſcandal, or ſedition, has been proved.

J. I cannot reconcile it to my conſcience.

C. Not when my lord judge tells you, you have nothing to do but to find the bare publication!

J. No—not if all the judges in Europe were to tell me ſo,—nor ſhall any man perſuade me, that the words, falſe, ſcandalous, and ſeditious, are mere words of form, and nothing more.—If they have no meaning why are they put in? To inſert words without meaning would be rediculous, and I am convinced in my own mind, that there is more in the words than jurymen are aware of, or elſe the uniform practice of putting them in informations would not have prevailed from the firſt commencement of that mode of proſecution to the preſent Æra.

C. Have you never heard what altercations there have been about the word *falſe?*

J. Yes,

J. Yes, and I very well remember, that in the caſe of the king and Owen, Mr. Pratt, (now lord Camden) inſiſted upon it, that as the word falſe was put in the information, the proſecutor was bound to prove it ſo, or the defendant ought to be acquitted.

C. And what did the judge ſay upon the occaſion?

J. What did he ſay! He ſaid the jury had nothing to do but to find the publication.

C. Did they find the publication?

J. No—they knew and maintained the rights of an Engliſh jury—they found him not guilty, tho' the bare fact of publiſhing was proved as clear as poſſible,—upon which the then attorney-general addreſſed himſelf to the jury, and ſaid, "gentlemen, do you mean to ſay that the de-"fendant did not publiſh the paper, or little "book ſet forth in the information?"—We find him not guilty.—"Do you ſay he did not pub-"liſh it?"—We find him not guilty,—this is our verdict, and we will abide by it.

C. And what do you mean to infer from thence?

J. I

J. I mean to infer, that if the ſimple fact of publiſhing was the only thing the jury had to do with, the court upon application would have ſet the verdict aſide, as being againſt evidence, and the proſecutor would not have been backward in making ſuch application,—but he was too prudent, for he knew the jury had a right to determine whether it was a libel or not, as much as they have a right to determine whether a perſon is guilty of murder. And every one knows, that the bare act of killing does not amount to murder, any more than the mere publiſhing a little book amounts to a crime.

C. Pray, Sir, does not the information ſometimes alledge, that the libel or little book was publiſhed with an intent to ſcandalize government.

J. Yes.

C. Is it neceſſary to prove the intent?

J. I think it is---for I very well remember in the caſe of Simmons the Jew, who was indicted for putting ducats into Aſhley's pocket, with an intent to charge Aſhley with felony. The judge, I think his name was Foſter, told the jury, that unleſs

leſs the proſecutor proved the ducats were put into Aſhley's pocket with the intent laid in the indictment, they muſt acquit him; "for," ſaid the judge, "the intent is the principal thing to be conſidered."— There is no harm in the bare putting ducats into another man's pocket—— It is the intention with which they are put there that conſtitutes the crime.— There is another caſe I remember, and that a very recent one too — A man in Weſtminſter-hall was indicted for making an aſſault upon Counſellor Stow's boy with an intent to commit ſodomy; in which indictment there were ſeveral counts, one for an aſſault, another for an aſſault with an intent to commit ſodomy.—The defendant was acquitted upon the laſt count, and found guilty of aſſaulting only, and for no other reaſon than becauſe the intent was not proved.—Now, I apprehend, that if the defendant had been charged only with an aſſault to commit the crime alledged in the indictment, and there had been no other count, the defendant muſt have been acquitted.—The ſame rule prevails in the caſe of an indictment for an aſſault with an in-

tent

tent to commit a rape, if the intention be not proved, the defendant muſt be acquitted. The caſe of parſon Prick is ſo remarkable, that I cannot omit it upon this occaſion: In a ſermon he preached, he recited a ſtory out of Fox's Martyrology, that one Greenwood, being a perjured perſon, and a great perſecutor, had great plagues inflicted upon him, and was killed by the hand of God: Whereas, in truth, he never was ſo plagued, and was himſelf preſent at that ſermon; and he thereupon brought his action upon the caſe for calling him a perjured perſon; and the defendant pleaded not guilty. And this matter being diſcloſed upon evidence, Wray, chief juſtice, delivered the law to the jury, that it being delivered but as a ſtory, and not with any malice or intention to ſlander any perſon, he was not guilty of the words maliciouſly, and ſo was found not guilty. — From theſe caſes it plainly appears, that the law conſiders the intention in criminal as well as civil proſecutions.

C. This doctrine appears very reaſonable I confeſs. But how ſtands the law with regard to libels, for that is the matter in queſtion.

J. Upon the ſame principles—for reaſon and law are ſo inſeparably united, that it is not poſſible for the latter to exiſt a moment without the aſſiſtance of the former.

C. How can that be? when the farmer told me, that the more true a libel was, the greater the offence:

J. He might tell you ſo, but the farmer was out of his ſenſes when he ſaid it.

C. Not he truly! He is as arch a fellow as any in our country.

J. To convince you that truth is not always rejected by the law, though the farmer has told you it is in the caſe of a libel, I will give you a narrative of a caſe which really exiſted in Worceſterſhire, and for the truth of it I appeal to every gentleman upon the Oxford circuit.—One Bearcroft an attorney, very well known in that part of the world, ſaid, that a particular perſon, by name, had ſtole a bank-note from Sir John Packington. The man was informed of

of what Bearcroft had ſaid, and thereupon brought his action againſt him.——The declaration ſtated, that Bearcroft had falſely, wickedly, and maliciouſly uttered, publiſhed, and ſpoke, in the preſence of his Majeſty's leige ſubjects, of and concerning the plaintiff, that he, the ſaid plaintiff, had ſtole a bank-note from Sir John Packington. — Bearcroft defended the action, juſtified and proved the words; but there being many other juſtifications, ſome, or one of which he did not prove, the jury found a verdict for the plaintiff, with damages, to the amount of two or three hundred pounds; at which the judge expreſſed very great ſurprize, and inſtantly declared, he could ſee no other reaſon for giving ſuch exceſſive damages, but to enable the defendant to buy off the felony.

C. Pray, Sir, can any one juſtify publiſhing a libel if it be true?

J. The lawyers ſay no—though they all agree, he may juſtify ſpeaking and publiſhing the ſame words if not reduced into writing.

C. Pray, where is the mighty difference between writing and ſpeaking the truth.

J. By writing the truth, it circulates more freely than by ſpeaking.

C. Is that the reaſon why it is more criminal to write than to ſpeak it?

J. Yes.

C. Then the law is made for the ſuppreſſion of truth.

J. I hope not. The law conſiders what is written, as the cool deliberate act of the mind, but imputes ſpeaking to indiſcretion and paſſion.

C. This is no reaſon why a man may not both write and ſpeak the truth.

J. Moſt certainly not. But the law ſaith, truth may be defamatory.

C. I cannot entertain ſo abſurd an idea of the law.

J. Poſſibly you may be fond of defamation.

C. No. I conſider the reputation of a man like a woman's virtue, ſuſceptible of the leaſt impreſſion, and think it can never be ſpoken of with too much tenderneſs. He who takes pleaſure in propogating reports to the prejudice of his

his neighbour's credit, is an enemy to ſociety, and, as the judge ſaid of the poor weavers, ought to be puniſhed with FIRM, STEADY, AND UNREMITTING SEVERITY.

J. I am clearly of your opinion.

C. But ſtill 'ſquire, this does not ſatisfy my doubts. Libels are generally pointed at men in office, who are appointed to manage the affairs of the nation, and I ſee no reaſon why their conduct ſhould not be open to enquiry.

J. It is open to enquiry; they are as much reſponſible to the public for their behaviour as a ſervant to his maſter.

C. How can that be, when you are harraſſed to death with informations, if you but mention their names or even hint at their proceedings?

J. Why that's true.

C. Suppoſe a great man had betrayed his truſt, embezzled the public treaſure, ſacrificed the rights of his fellow-ſubjects, or impoſed upon his ſovereign to induce him to exerciſe that prerogative which was veſted in him for the benefit of the people in favour of the moſt abandoned wretch,

wretch,——Would it be criminal to ſtate this man's conduct to the public?

J. I hope not— that doctrine might ſuit an arbitrary government, but it ſeems irreconcile able to the principles of a free ſtate, and the genius of the Engliſh people.

C. Pray, Sir, Have you never heard of ſuch a perſon as Mr. Hampden?

J. Yes. He was a great good man, who ſtood forth in defence of the rights of the people, and in ſupport of the laws of the land.

C. Upon what occaſion?

J. When the Judges declared that it was lawful for the King to levy ſhip-money without the conſent of parliament, he inſiſted that was it unconſtitutional, and refuſed to pay it.— He not only ſpoke, but wrote againſt the meaſure; and if it had been criminal in him to have wrote againſt ſuch a proceeding, the people of this country might have groaned under the yoke of an arbitrary government to this day.

C. How did he prevent it?

J. By

J. By opening the eyes of the public.

C. And what was the consequence?

J. He died a martyr to the laws and liberties of his country, lamented and beloved.

FINIS.

F I N I S.